

**KITTY HAWK TOWN COUNCIL  
MINUTES**

**Monday, March 7, 2011**

**Kitty Hawk Town Hall, 6:00 PM**

**AGENDA**

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentation Former Police Lieutenant Tony S. Garrett, Sr.
5. Interfaith Community Outreach Presentation
6. Public Input/Beach Driving
7. Public Comment
8. Consent Agenda:
  - a. Approval of Minutes. February 7, 2011 Regular Meeting
  - b. Revenues and Expenses Report for January 2011
  - c. Tax Pick Ups and Releases
  - d. Tax Exemption
  - e. FY 10-11 Budget Amendment
  - f. Resolution Declaring March 14-18, 2011 *"Flood Safety Awareness Week"*.
9. Item Removed from the Consent Agenda
10. Public Hearings:
  - a. Text Amendment - proposal to amend Sections 42-1, 4-5, and 4-6 with standards for riding horses in Kitty Hawk, keeping horses, setbacks for horse shelters and enclosures, and allowances for nonconforming situations to continue in the future.
  - b. Zoning Amendment - proposal to rezone four (4) parcels at 4907, 4911, 4915, and 4919 Putter Lane (located in the 4900 block of N. Croatan Highway) from Beach Residential (BR-1) to Beach Commercial (BC-1).
11. Return to Regular Session (Council action on above public hearings)
  - a. Council action for 10 (a) and (b) may include approval, denial, approval with modifications, or tabling action.
12. Planning
  - a. Call for Public Hearing. Text Amendment: Proposal to replace the existing Chapter 32, *Soil Erosion & Sediment Control*, with updated standards and wording from the N.C. Division of Land Resources to make our standards compliant with current State standards. The public hearing is requested to be scheduled for the April 4, 2011 Town Council meeting.
13. Unfinished Business
  - a. Conditional Use Permit: Application for a conditional use permit to establish an open air farmers' market and a variety of retail uses within the existing building in a Beach Commercial (BC-2) zoning district on the former Foreman's Lumber property at 4100 N. Croatan Highway.
14. New Business
  - a. Appraisal of Property.

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15. Report or General Comments from Town Manager
  - a. Update on E. Kitty Hawk Road Sidewalk Project
  - b. Update on Sandy Run Park Project, Phase II
  - c. Compliment on issuance of sign permit for Sea Scape Beach and Golf Villas
  - d. Compliment on cooperation given to the Insurance Services Office
  - e. Compliment from Kim Bowman concerning our Ocean Rescue
16. Reports or General Comments from Town Attorney
17. Report or General Comments from Town Council
18. Public Comment
19. Adjourn

**COUNCIL MEMBERS PRESENT:**

Mayor Clifton Perry, Mayor Pro Tem Gary Perry, Councilman Ervin Bateman, and Councilwoman Emilie Klutz

**COUNCIL MEMBERS ABSENT:**

Councilman Richard Reid

**STAFF MEMBERS PRESENT:**

Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Planning Director Joe Heard, Finance Officer Mike Eubank, Police Chief David Ward, Fire Chief Lowell Spivey, Public Works Director Willie Midgett

**1. CALL TO ORDER**

Mayor Perry called the meeting to order at approximately 6:00 p.m.

**2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE**

After a brief welcome a moment of silence was held followed with the recitation of the Pledge of Allegiance.

**3. APPROVAL OF AGENDA**

MPT Perry moved to approve the agenda as promulgated. Councilman Bateman seconded and the motion carried unanimously with a vote of 4-0.

**4. PRESENTATION OF THE ORDER OF THE LONG LEAF PINE, SERVICE FIREARM, AND BADGE TO FORMER POLICE LIEUTENANT TONY S. GARRETT, SR.**

Police Chief David Ward announced Lieutenant Garrett retired December 31, 2010 with over 24 years of service with the town and over 30 years in law enforcement. North Carolina General Statutes allow a retiring law enforcement officer to receive his gun and badge upon retirement. Tonight Lt. Garrett will be presented with his gun, badge and *The Order of the Long Leaf Pine*. The Order of the Long Leaf Pine is the highest honor a governor can bestow on a North Carolina citizen.

Chief Ward said that 27 years ago the first time he ever sat in a police car was with Tony and tonight is special for him also. He thanked Tony for his service as a friend and a police officer. (Applause) Mayor Perry told Tony he has a lot of "sticking power" and presented Tony with his gun, badge and *The Order of the Long Leaf Pine* plaque.

**5. INTERFAITH COMMUNITY OUTREACH**

Bill Pitt, Chairman of the Interfaith Community Outreach, approached the lectern and announced Ms. Candelora is retiring at the end of this month after 8 years as executive director. He thanked her for her service and asked her to stand for a moment of special recognition. She is largely responsible for the success of the ICO. Mr. Pitt then introduced Jennifer Albany who will be replacing Ms. Candelora.

Mr. Pitt said the ICO helps with financial assistance for families who are facing some sort of emergency crisis. It is a clearing house and a referral point for folks who need other sources of information or help within the community. An example of someone ICO helped was a woman with cancer who had a good job with insurance that covered everything she needed. But when she had to travel to Duke University Medical Center for treatments she exhausted her savings paying for traveling expenses. ICO helped with her expenses for the last two weeks of her treatments. Today she is cancer free and has a new start and a new lease and that is what these numbers are all about.

ICO is a 501 (c) 3 and when started had 7 faith communities that supported them. At the end of 2009 there were 43 and now there are 53. There is a good board with a lot of skills and dedication, and a lot of volunteers who work very hard. The executive director is the only full time staff and there are currently two locations in Southern Shores and Jarvisburg.

A lot of folks are having trouble with their contributions but the ICO contributions seem to be holding up as well as the fund raisers and volunteers. Difficulty is with foundations and grants which have dropped significantly. That is the challenge during the slow recovery along with the high unemployment rate that continues to drive a lot of families in crisis here. In 2009 ICO had a very large contribution, a onetime windfall which helped tremendously.

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Mr. Pitt offered another example of how ICO helped a self-employed construction worker in his forties, married, with one child. His wife has 2 part time jobs because she cannot find full time work. The man, "John" went to ICO because his truck had quit working. He bought the parts and tried to fix it himself but could not. He was really discouraged and ICO found someone to repair the truck for about \$700.00. It was enough to get him going again. That is what an emergency crisis is and that is getting somebody through an emergency crisis.

Mr. Pitt showed on the power point presentation the ICO budget for the coming year. It is higher than in years past and the planned deficit is quite a bit higher, almost twice what it was last year. Reserves will help continue for about 3 more years.

Key challenges include staying within the mission and that sounds easy and simple. Who could not stay within a mission of helping people in a temporary emergency crisis? A problem is things are not so temporary. They hear many stories every day about people who really deserve help and unfortunately it is not temporary. It is not something ICO can really fix. And we have to find something else besides financial assistance for those people. Generally a referral to the Department of Social Services or some other relief agency that is equipped to handle long term crisis. ICO is not equipped to do that. When that is done the volunteers feel really terrible and they really get stressed. A lot of time is spent keeping the volunteers "bucked up" and trying to handle that stress.

How can you help Mr. Pitt asked. It is pretty simple. Those who are financial supporters please continue and if more can be given, please do so. Mr. Pitt said he would be happy to answer any questions, thanked council for their time and would appreciate any additional support that could be provided.

Mayor Perry thanked Mr. Pitt and asked him to keep up the good work.

**6. PUBLIC INPUT/BEACH DRIVING** - *At their January 25, 2011 meeting, the Recreation Committee voted unanimously to recommend that the Town Council consider a proposal to allow beach driving from Starfish Lane, south to the Kill Devil Hills town line, from October 1st through April 30<sup>th</sup>. The area encompasses about 1.5 miles of beach, with a single vehicular access at the Kitty Hawk Bath House. At their February 7<sup>th</sup> Council meeting, the Town Council requested that the staff evaluate the proposal, and agreed to place the item on the March 7, 2011 Council agenda. The public will have the opportunity to comment.*

Christine Buckner, Chairwoman of the Recreation Committee, thanked council for their attention and consideration of the committee's proposal and introduced Committee Member Ricky Brake to outline the beach driving plan.

Mr. Brake stated good evening and hoped council had seen the draft of this proposal. It originally only had option A and now option B is offered. Option A's total distance of beach is 1.4 miles, the north terminus being Starfish Lane and the south terminus being the Kill Devil Hills town line. The total number of oceanfront houses within that section of beach which would



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be affected by this would be 16. He then split it into option B and discussed it with the other recreation committee members. It simply gives another option in case there is trouble with option A although option A is the one they would like approved.

Option B would be a total distance of .7 miles. The north part begins at Starfish Lane and ends at the first oceanfront house south of Sea Dunes Townhomes. That stretch of beach has only one house that would be affected and that is Pelican's Perch, the house that sits out there by itself.

A background on why the committee discussed this is beach goers, including those who swim, surf, fish, walk their dogs, or walk the beach have had difficulty finding adequate parking for years in Kitty Hawk. Numerous attempts over the last several years by the recreation committee to establish additional parking has not materialized for various reasons. Parking along the sides of existing streets such as Lindbergh Avenue and Historic Street has even been considered but objections by homeowners has caused "No Parking" signs to remain in place. The Lillian Street parking lot was a valuable addition to the town's facilities to provide the beach goer parking. However, since the day it was constructed, the 18 spaces have been far short of adequate to meet the needs. Increased use of the beach at this stretch, mainly from Starfish to south of the Bath House, has caused overload to the only 2 nearby parking lots and many beachgoers simply cannot find a place to park. This stretch of beach is most popular because it is wide open, unobstructed by homes, and has an excellent surf break. The town purchased this section of beach several years ago and coupled with the section of beach in front of the Bath House it makes up a continuous public beach .7 of a mile long.

It is therefore a lack of parking that has led us to this proposal. It is more of a beach parking proposal than a beach driving proposal. Although the parking shortage is year round and obviously more critical in the summer months we knew it would not be feasible to have driving on the beach during the summer tourist season. Therefore we are only proposing what is feasible such as what the two larger towns of Nags Head and Kill Devil Hills allow. Moreover we have carefully considered the request in minimal fashion, not proposing driving through the entire town limits of beach.

The shoulder season months of October, November, and April are three prime months of the year where the weather is good for beachgoers. However there is not the abundance of beach chairs and bathers. Still, parking during these shoulder months when the waves and weather are good is over loaded. These shoulder months would have the most value to offer for this proposal. Obviously as the fall turns to winter and the weather is cold, no matter how good the waves or fishing are, there is usually not the problem of finding a parking space.

Crowding of Lillian Street parking has led to many cars trying desperately to find a space so they end up parking along the shoulders of Lindbergh Avenue, in local business parking lots, or worse, in driveways to houses. This is a bad situation and usually the town police are combing the area and may write tickets. The only major business overflow parking lot which has been

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used a lot lately is the old Bert's Surf Shop, now closed. When it reopens as a new business the lot will be lost. That lot has been full every time there has been a major surf swell.

Also, regarding the surf contests held by Eastern Surfing Association, the Town of Kitty Hawk has always been cooperative in issuing permits when the ESA has requested to have a contest. Lillian Street break has often been the best break on the north end of the Outer Banks but ESA officials had to rule it out because of inadequate parking. Byrd Street in the past has had a good break but contests there are difficult because of the number of houses. The first two surf contests scheduled for ESA occur between April 1<sup>st</sup> and April 30<sup>th</sup>. The final ones in the season occur in October. If beach driving parking were implemented, then the option for the ESA to have contests on the longest open section of beach anywhere around would be feasible, should they choose to have it in Kitty Hawk.

Next, this is about the neighboring towns and the driving privileges that they have on their beaches. The Town of Nags Head has over 40 oceanfront beach parking lots and still allows driving on the beach through the whole town with a permit. The Town of Kill Devil Hills has 20 oceanfront beach parking lots and still allows beach driving on the beach through the whole town and no permit is required there.

The Town of Kitty Hawk has only 3 parking lots and none are oceanfront as these are on the west side of the beach road. The 3 parking lots, Byrd Street, Lillian Street, and the Bath House are all much smaller than the average lots in the other two towns. When you consider the fact that the Town of Kitty Hawk owns a greater percentage of land in the proposed beach driving section and has much less parking than the other two towns the return for this investment would be far greater per mile of beach. Hundreds of beachgoers can benefit with only a maximum of 16 houses being affected or only one with the option B chosen.

In a recent discussion with the Town of Kill Devil Hills staff they stated that their problems with beach driving in their town have been minimal, almost nonexistent. Only two complaints have occurred and these were minor issues. There has not been the destruction of dunes like some have suggested. Minor rutting does occur which seems like damage but does nothing to harm the structure of the beach. It is cosmetic, surface destruction which is quickly smoothed back by tide and wind.

In a recent discussion with the Town of Nags Head staff they stated that they issued permits for a small annual fee to both residents and nonresidents even out of state residents. They have not had any issues with beach driving and have allowed it for years because they can appreciate the benefit it offers to the beachgoers. They even had some few residents a few years ago try to do away with beach driving, but the public support to continue beach driving was overwhelming and they decided to keep the beaches open to the driving. They stated that the type of people that drive on the beach during the off season tend to be more locals and tend to be more responsible persons who know how to drive and take care of the beach.

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Last is implementation of this proposal. Beach driving in this proposed section of Kitty Hawk could be accomplished simply with one beach access point being at the Bath House. This section of the beach is one of the widest sections of beach, offering a very long flat approach to the water and dunes on each side of the cut. During approaching storms the town public works department could continue to do as it has always done in pushing up a berm there to prevent ocean waters from over washing the beach road. Once the berm is removed beach driving could resume. There is no evidence that flooding would be increased with beach driving.

The terminus section near Starfish could be marked by putting up a seasonal sign indicating no beach driving past that point. This sign could be installed on September 30<sup>th</sup> when beach driving opens and removed April 30<sup>th</sup> when it ends. Kitty Hawk may prefer to allow beach driving like Kill Devil Hills without the required permit to reduce the amount of paperwork and management. An informational sign should be made and installed at the one beach entrance ramp like in the other towns.

Mr. Brake ended his comments by thanking council.

Mayor Perry asked Clerk Morris to call up the first speaker.

1) **Dennis Stadther:** *I and my neighbors are here tonight to recommend opposing the Recreation Committee's proposal to open sections of Kitty Hawk beaches to vehicular traffic. Kitty Hawk ordinances currently allow only three types of usage of the beach in terms of vehicle access. One would be emergency vehicles, town vehicles used to support repair of the dunes and things like that, and commercial fishermen.*

*By opening up the beach to beach traffic during the off season I think that what we are going to see is more destruction of the beach, particularly in this very fragile section of the beach down where there are no houses, closest to the Kill Devil Hills line. And I think for that reason alone it should be opposed. We wondered if anyone bothered to look at this stretch where there are no houses or to talk to Kill Devil Hills' residents who are right across the line there, to talk about the damage that is done to the beach and their experience with beach driving. You may have talked to the staff but I do not know if they talked with anybody who is living in those areas and what they have to deal with on a day to day basis. I know no one talked with us. If they think that the old people who use the beach down there and have some interest in it are those who live on the beach, they are very wrong. There is a community down by us which is the Kitty Dunes subdivision that uses that beach every day. My wife and I walk that beach, usually twice a day, year 'round and I can tell you that when the commercial fishermen are there setting and retrieving their nets they leave the beach so rutted you could not barely walk on it half the time.*

*In addition, that stretch of the beach, because it is so narrow, is often affected by the tides in a way that makes vehicle travel almost impossible. High tides will sometimes wash all the way to the houses that are there, restricting any sort of beach access for vehicles up to the very closest point, closest to the dunes. After Hurricane Isabel the beach was repaired, the dunes were*

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*repaired down there and sand fences were put up to try and prevent erosion. It has not helped all that much because of wind and tides down there really take their toll on those beaches. But even in the off season where we do not have as many visitors to the beach during those warm months that they talk about where people can drive on the beach and park, there are beachgoers there too. In fact the people that we see on the beach every day during that off season are usually property owners from there who cannot come during the season because their houses are rented out or people with young children because school schedules do not affect their presence on the beach.*

*We get a preview of what beach traffic would mean down at our stretch of the beach every time fishermen come to set and retrieve their nets. As I said they leave the beach very rutted. The only thing that repairs it are the tides and it has to be a high tide that comes up and repairs it all. Even the fishermen have to be very careful there because the sand is very, very soft in that section. If they do not watch themselves, getting the net too close to the water, they have to pull their trucks out of the sand at times.*

*One of the reasons cited by the Recreation Committee for promoting this was to provide parking in this area. Well if there is a parking problem in this area it is news to us because we have not heard about it. While there may be a parking problem down at the larger, flatter beaches near Lillian Street, down by us it really has not been posed as much of a problem. We do not have any houses on the beach in that last stretch close to the Kill Devil Hills line and if you park cars there you would just be taking out spaces that would normally be occupied by beachgoers. And there are walkers, shell seekers, or beach glass seekers, people who go down there every day just in the off season because it is nice, it is not crowded, and easy access to that beach.*

*I was wondering though if we should be taking a chance of destroying one of our most valuable natural resources here just to provide a parking lot for vehicles during the off season. Is this the only solution we can come up with to a parking problem? What I consider an inconvenience by destroying or potentially destroying a most important asset, a natural asset that we have. We have a parking lot down at White Street and Poseidon that was part of Kitty Dunes subdivision when it was developed. It is unclear who owns that property because it has not been kept up over the last couple of years and it has fallen into disrepair. Now during the off season surfers like to come down there and use that parking lot to park in and then walk across the street to the beach at White Street. I would think that Kitty Hawk could investigate taking over responsibility for that lot, refurbishing it so that it would in fact handle more cars and provide a parking area off the beach without having to resort to parking on the beach itself.*

*I think there are a lot of unanswered questions that are raised by this study by the Recreation Committee. I do not think they talked to people in the area. I think what they did was talk with staffs and then looked at it from their own points of view without asking what the people who live in this area think about this. I know from everyone that I talked to, property owners and residents in this area, I have yet to find one who supports it. This council has always acted very*



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*deliberately and very cautiously when it considers fundamental changes to the town policy and the beach driving policy is a fundamental policy that the town has had for a long time. I applaud your caution and I hope that you will use it in looking at this proposal. Not to rush to judgment on this and certainly to get a lot more input from people before you even consider voting on such a proposal. Thank you.*

Mayor Perry asked Mr. Stadther if he was referring to a parking lot at the south end of Poseidon.

Mr. Stadther answered it is at Poseidon and White Street. It was privately developed when Kitty Dunes subdivision was developed and thought the original developer and not Kitty Dunes Realty actually owns it. No one ever passed on any ownership of the land to anybody else and they had looked into the possibility of trying to get that property for the owners in the area and then having it as a closed parking lot which it was intended to be originally. But nobody could tell us who owned the land. If council wanted to do something to solve the parking problem that would be at least one idea that should be considered before beach parking.

Councilwoman Klutz offered it had been looked into at one time and thought it was Kitty Dunes Realty or Kitty Dunes Homeowners Association who owned it.

Mr. Stadther said he did not think Kitty Dunes Realty owns it or they say might say they do but they were just agents for it.

Councilwoman Klutz agreed it is something to look into.

**Susie Krause:** *I also live in Kitty Dunes. We have a home on Goosander and to answer your question about that parking lot, we have looked into it. Some of the neighbors and a portion of homes in Kitty Dunes own it. It is not Kitty Dunes Realty and it is in disrepair. It is not real big but there are a number of homes that we have looked into that actually own that parking lot so I do not know if that is something that you would be able to use or not.*

*When I read the town council was thinking about parking on the beaches because there is not enough parking in the parking lot, I thought I read it wrong. I mean I have never heard of anything so ridiculous. You do not park on our beaches because there is not a parking lot. I mean I can come up with all kinds of places you could put a parking lot rather than the beach. Our beach is not that wide at that part. We all walk it every day, we keep it clean, we are proud of our beach and there are a lot of times that we cannot walk it. I am between Tateway and White Streets so we cannot walk through there when the tide is really high or we are having a storm. You cannot get through it. It is not wide enough.*

*I would like to see you come up with other plans for parking and if there is a problem with parking in the off season I cannot imagine the problem in the summer time. And so to make it parking on the beach just to help with parking in the off season makes no sense to me at all. I*

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*mean it sounds like we have parking problems to begin with so I cannot come up with any good reasons that I can think of to park on the beach.*

*You would have to police it. There are people that have their septic tanks out there. Sometimes from the storms they are exposed. A number of times just this year they have been exposed and had to haul in sand to cover them up. There are a lot of people there that have their beach area that they are very protective of because of erosion. They keep bringing sand in, bringing sand in. There is so much destruction on the beaches from driving on the beaches in Kill Devil Hills. I personally have seen it from walking down there. They go over people's property there is no way to police them. There is no way to be down there to tell people where you can go, where you cannot go. They are going to be driving over people's properties so until you do something like this you would have to talk with every person in those 16 homes on the beach because that is their back yard. They are bumped up so close that they have trouble keeping the little bit of sand that they do have up there. I cannot imagine someone driving through there and that they would permit that.*

*These people that come up with these ideas do not live on the beach. We are there every day. So if there is a parking problem I would like to see us come up with some other solution. A parking lot, maybe parking and busing. I have grown up on the beaches in Delaware and I can tell you the one thing they do not do is put a parking lot on the beach. They come up with other parking solutions and do busing or what not so they can have the events that they want.*

*We are so nervous about it because we know at Kill Devil Hills and Nags Head and places that have driving on the beach, they can never change it. The people there hate it. If you ask the people that go to the beach there and live there and use the beaches, none of those people will tell you they enjoy having the people running up and down the beach. They hate it but they cannot change it. Once it is there it is going to be hard to remove. So we are nervous because we really do not want to see it on our beaches. We love our beaches and we are very protective of them. Thank you.*

**Jan Moore:** *Hi. I too am against driving on the beach. I am hoping we can find another solution for parking other than driving on the beach. It seems like there are very few events that need the parking on the beach but there would be driving on the beach every day. My husband and I have a house in Kill Devil Hills and the reason that we moved to Kitty Hawk was to get away from the driving on the beach. And some of the things we observed there were there are more people driving on the beach than actually parking on the beach. There were people driving across our neighbor's yard across the street from us on the beach side right across their septic field quite often. There was a day when a truck came within a foot of my beach chair on the beach and several times I called the police to see what could be done. I found out that the only thing that could be done at that point was for me to press charges against the people I saw doing things they were not supposed to do when driving on the beach. I wonder how this would be policed if we did have this here too. So I just hope that you will give real consideration to this because I just do not think it is a good idea at all. There has just got to be another solution and I*



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*agree with all of the comments that have been made previously so I am not going to reiterate those as well. Thank you.*

**Ron Lunardini:** *I am not a permanent resident of Kitty Hawk but I am an owner in the Sea Dunes community that would be affected by this. Recently retired and finding myself spending about a quarter of my year down here so I am feeling more and more attached to this area. Sufficiently so I am now the vice-president of the homeowner's association there so I am representing my own views and from as many of the other owners as I could speak with prior to coming tonight having only learned about this just yesterday in fact. The 82 homeowner's in Sea Dunes I think would probably unanimously be opposed to allowing the driving on the beach. I am a member of a planning commission in the borough where my permanent residence is so I very much respect the work of resident committees and the deliberations that no doubt they have gone through to find a solution to a parking problem but like others who have spoken, I am not aware of a parking problem. Maybe I am not here at the times in which it would be most evident but to me again that would be in season and I have not seen that kind of difficulty at least in that Sea Dunes area. As I have mentioned, 82 townhomes I think in about 10 acres, probably valued in the 25 million dollar range by today's estimate and I would think those folks would be unanimously opposed to this.*

*I was a tourist in February, somewhat of a snowbird and spent one week in Foreman Beach, Florida which is just north of Daytona Beach. The first day I looked out of the resort, which was beach front, and saw vehicles driving both directions on the beach. I was first confused thinking it made no sense whatsoever. Then, offended as a person who was feeling some ownership of sorts, rental ownership of course, for that part of the beach. That beach had to be 3 to 4 times the width, or the depth, from dunes to ocean that I see here in Kitty Hawk. I cannot imagine that there is sufficient space even if this were a good idea to solve a problem. I cannot imagine that we have sufficient space to allow traffic to be moving on those beaches.*

*Interesting just this week right now in the Sea Dunes area there is, is escarpment the word when the erosion is so abrupt? There is about a 4 foot drop almost exclusively in the area defined by the Sea Dunes Townhomes. And the water as I observed it both yesterday and today when I was trying to walk our dogs there was all the way up to that cut off. There would be no way vehicular traffic or parking could be accommodated in that area. So as much as I appreciate the work of committees and the difficult decisions that you have, I would hope that this one is an easy one because it seems to me there is no positive rationale for approving the driving on the beach proposal for Kitty Hawk. Thank you.*

**Rita Phillis:** *My name is Rita Phillis, I live at 3864 Elijah Baum Road and just so everyone knows this, I am a member of the Recreation Committee. I am actually the secretary of the Recreation Committee. I would like to start out by telling you guys I appreciate passion. It is nice to see that some people have come out that have something to say here. I wish some of you would bother to come to some of our meetings. I have lived in Kitty Hawk for almost 20 years and I have been on the Recreation Committee for 2 years. Four people have come to meetings.*

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*The meetings are advertised, the meetings are in the newsletter that is put out. Four people have come to the meetings mostly just to observe. We appreciate that they came but maybe you guys need to come to some of our meetings.*

*No one has suggested doing anything that would destroy the beach of Kitty Hawk. Everyone who has spoken here tonight lives very close to the beach. You do not have a parking problem. You are parking right there. We are not suggesting that the beach turn into a parking lot. We are suggesting allowing beach driving for those people who are not fortunate enough to live within walking distance of the beach. That beach is public property. It belongs to everyone. Private property ends at the mean high tide line. Now I am not smart enough to know exactly where the mean high tide line is, but the fact of the matter is this is North Carolina and the beach is public property. It does not just belong to the people who live on the oceanfront or across from the oceanfront. It belongs to everyone and when there is difficulty with people, surfers, fishermen, shell seekers, etc., etc., maybe we do need to do something to try to address it. Ricky actually had done quite a bit of research on this when he brought it up at our last meeting because he surfs and he knows from firsthand experience how hard it can be in the shoulder season to try to find somewhere to park.*

*I like to pick up sea shells. To be honest with you I am too lazy to walk the mile, three quarters of a mile to go to the beach and then also walk up and down the beach looking for sea shells. I go there rarely because it can be very hard to find a place to park so that is why this has been suggested. It is not that we are trying to destroy anything. We are not trying to take anything away from anybody. We are just trying to make it a little bit easier for every member of the public, maybe in the off season, to be able to use the beach just a little bit. Thank you.*

Clerk Morris informed the mayor there was no one else signed up to speak. Mayor Perry asked if anyone else wished to speak on beach driving.

**Cheryl White:** *I live in the Hurdle Subdivision which is just south of Sea Dunes and I am very, very passionate about the oceanfront. I know when you walk past where the Sea Dunes subdivision is, where those homes are, the beach is shallow there. Sometimes you just have to turn around and come back because you cannot get around because you are in the water. And I am also very appreciative of those that live on Elijah Baum and other areas as well but in the off season that is when it looks like to me the parking lots are available for you to park at. In the summer time we expect all the homes to be full and crowded... but when it is in the off season we have those 3 parking lots that they just mentioned to go to.*

*I do not even like to see the commercial fishermen. My husband, when I told him I was coming tonight he said "oh this parking is just going to be for the commercial fishermen," but I see that it is not. It is for those that want to park there on the beach. I saw a lot of people walking their dogs. The first thing I do every morning when I get up is look over at that ocean and I do not want to see it be a parking lot and the ruts that it makes. I like to preserve the natural beach. I know that we have to have places for the public to use the beach but in the off season we have*

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*the availability to do that. What is so nice about Kitty Hawk is that it is preserved and we need to hold onto what we have because we do not know how long we are going to have it. So I would like to ask the committees to really look at this. I do not know what the answer is either but I do think if we are looking for driving in the off season it looks like to me that that is when we have the availability in the 3 parking lots.*

Mayor Perry asked if anyone else wished to speak.

**Ann White:** *I live on Tateway in the Kitty Dunes section. We have three and a half miles of beach. That is all Kitty Hawk has and we have to take care of what we have. Guests come to rent the homes and they are welcome to go on the beaches. We try and keep our beaches clean and we try and make everybody feel very welcome. But some of the areas have problems with people that park on the beach. Like in Corolla, they can just park, block it off, and everybody else has got to walk around them and try to get by them. That is their property for the day because they are there.*

*It is not a good idea. It will not work because in the middle of the beach between White Street and Tateway they had poured cement and there are big humps there... the sand will go over it but then when it takes that sand out you have these big humps there. We have had several accidents down there with the emergency crew riding their bikes. They do not see it.*

*It is just a small area there and like I said at high tide... cannot do anything right there. You cannot walk on the beach or anything so we would appreciate, you know, really thinking about it hard because we have to protect what we have and it is not much so we really have to work at it. Thank you.*

**Joe Monroe:** *I live in the village. Since the 60's I have been driving on the beach and I would like to still drive on the beach. It has never been a problem. People have been fishing here for years. They have fishing tournaments in Kill Devil Hills and Nags Head. They do not even issue them a permit in Kill Devil Hills and there is no problem because I drive there. I fish on the Kill Devil Hills line because I can drive there and fish off that line. I know this is not about fishing but it is about parking on the beach and there is no problem with parking on the beach. Walk around the vehicle. There is no problem with that. I mean we have all done it. I do not know if we have all done it or not, but anyway I would like to see it back. That is all I have to say.*

Mayor Perry asked if anybody else would like to speak.

**Susie Kraus:** *May I add something? If you want to go shell hunting, sea glass hunting which they do a lot in Kitty Hawk, it is a real popular place to do that, you are not going to find sea shells and sea glass when they have been driving all over it. Nobody goes sea shell hunting and sea glass hunting in Kill Devil Hills. It is all ripped up by the trucks and the problem is they do not park there they drive up and down, back and forth. So if you want to come and drive on the beach you can drive on the beach in Nags Head, you can drive on the beach at Kill Devil Hills*

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*and we welcome whoever wants to come and go sea shell hunting to Kitty Hawk because they are there. They have not been destroyed. Thank You.*

**Rita Phillis:** *I do not want to go shelling and sea glass looking in Kill Devil Hills. That is why I live in Kitty Hawk.*

**John Rosendale:** *My wife and I are new, full time residents in Kitty Hawk. We moved to Kitty Hawk for one reason and it was the beach. We walk on the beach every day and we love the beach. We walk for long periods of time and I hate when I get to Kill Devil Hills because the appearance of the beach changes. The ruts all over, the tire tracks, it is hard to walk. To me it is just unpleasant.*

*I do not know if there has been any ecological study of driving on the beach other than talking with people who work in the towns. If there has been a good study of what that actually does to the beach.*

*My wife and I were two of the four people who attended the Recreation Committee. It was our first meeting so we did not say much. This is something that I would really hate to see. One of the reasons we chose Kitty Hawk was for that very reason and you have an extra pair of taxpayers because of it. I really hope you all will consider not voting for this measure.*

Mayor Perry asked if there was anyone else who would like to speak. No one else came forward.

Following MPT Perry's request for a show of hands for and against beach driving, there were more comments from the audience. It was difficult to identify who was speaking and much of it was inaudible.

MPT Perry said there are a couple of things he has learned since attending the *Shoreline Management Committee* meetings. There are presentations by different people that deal with beach nourishment, beach sediment, sand movement, things of that nature. One of the things learned and with other research, Kill Devil Hills does not have as much problem with beach erosion as we do because they are thought to set on a coquina shell base. Basically they have something we do not have because Kitty Hawk is thought to set onto an old river bed. A pre-historic river bed that has mud and sand under it. Basically, there is not a firm foundation like they have south of town and that is creating a problem for Kitty Hawk with severe erosion. That erosion causes a very steep beach.

Continuing with saying he has driven on the beach, MPT Perry said the beach is different than it was back then. The beach is steep here, it is eroding, and it is just not very drivable. Even at low tide there is a shell beach which is a concern and that is the reason it is so soft. He also spoke of when he was stationed at Oregon Inlet they would go to Duck and pull people out of the gravel pit there. He understands what that beach is like and loves to drive on it also but does not think Kitty Hawk is the right place to do it. He also does not know if it would accelerate the erosion or



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not but it certainly cannot help the erosion that is here. To the rest of council he opposes beach driving in Kitty Hawk.

Mayor Perry offered he gets a number of complaints about commercial fishermen on the beach. Whether they really are commercial fishermen and what they are doing.

Councilman Bateman said during his tenure on the council, recreation committee, and the planning board, he has learned three things. Do not mess with horses, kids, and do not mess with the beach. He appreciates the committee coming together and trying to find alternative parking and things for people to do in the off season. That is good thinking and agrees that we need to find parking spaces elsewhere. Beach driving right there would not be very good. He appreciates what the committee does; it is a valuable service for the town.

Mayor Perry said somewhere towards White Street there was another paper street that council looked at for parking but they could not get access to the beach there.

Councilwoman Klutz said the same is the case at places where there are current spaces. There are parking restrictions right now because there are no public accesses to the beach. She is the liaison with the Recreation Committee and walks the beach every day. As a beach walker, she appreciates the fact that there are minimum ruts on Kitty Hawk's beach. She noted for the Recreation Committee that after 20 years or so of no beach driving it is probably going to make sense, particularly based on some of the comments heard tonight, to not change that policy. At the same time she will do whatever can be done to see if some of the ideas mentioned tonight can be expedited. Additional parking at Lillian Street or some of the other areas.

MPT Perry reiterated he thought the answer was no beach driving. That is the way the audience can go home and reminded them to not come out only when there is controversy. There are boards and committees to sign up for. Council is always looking for volunteers.

Councilwoman Klutz thanked the Recreation Committee for the work they did putting this proposal together.

**7. PUBLIC COMMENT.**

**Dr. Lin Logan.** Stating she is representing the League of Women Voters of Dare County, she presented the 2011 *Citizens Guide*. Copies have been published by the League since 1988 and acknowledged the municipalities and local businesses that have contributed generously to the publication. She also acknowledged the support of the many employees that have provided updated information. The guide is published under the auspices of the State League of Women Voters Citizen Education Foundation. The guide provides names, addresses, telephone numbers, and email addresses for national, state, county and municipal officials. Throughout the Outer Banks, 7,500 free copies have been distributed. The League of Women Voters is a nonpartisan political organization and encourages being informed and active participation in citizens, in

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Government, and influence public policy through education. The League is open to men and women of voting age.

Mayor Perry said the guide is very helpful.

Dr. Logan agreed they are very helpful and there are some people that do a lot of work on it. She thanked council.

**8. CONSENT AGENDA** - *Items on the Consent Agenda are considered to be non-controversial, routine in nature or items not requiring a presentation to or discussion by the Town Council in order to consider the item(s). Any item may be removed for discussion by council or by any member of the audience who wants to hear the item presented and discussed.*

- a.) **Approval of Minutes.** February 7, 2011 Regular Meeting. *(An affirmative vote for the Consent Agenda will approve these minutes.)*
- b.) **Revenues and Expenses Report for January 2011.** *(An affirmative vote for the Consent Agenda will acknowledge this report.)*
- c.) **Tax Pick Ups and Releases.** *(An affirmative vote for the Consent Agenda will acknowledge this report.)*
- d.) **Tax Exemption.** On February 7, 2011 the Dare County Board of Commissioners heard evidence and received testimony on Lighthouse Christian Fellowship's request for untimely application for exemption on parcels 010241-001 through 010241-010 for 2010. The Board approved the request to accept the untimely application and denied property tax exemption. As per N.C.G.S. 105-282.1(b) the town must make its own determination as to the exemption status. *(An affirmative vote for the Consent Agenda will adopt the Dare County Board of Commissioners decision on this matter.)*
- e.) **FY 10-11 Budget Amendment.** This budget amendment in the amount of \$25,000.00 is to recognize and appropriate funds provided by the NC Department of Transportation through a reimbursable agreement for a Storm Drainage Study (WBS42983) approved in a prior Council action. Approval of this amendment will provide funding for an engineering study to evaluate the potential impacts associated with local flooding and recognizes that all funding is subject to the availability of state funds per the agreement. *(An affirmative vote for the Consent Agenda will adopt this budget amendment.)*
- f.) **Resolution Declaring March 14-18, 2011 "Flood Safety Awareness Week".** *(An affirmative vote for the Consent Agenda will adopt this resolution.)*

Councilwoman Klutz moved to approve the Consent Agenda. MPT Perry seconded and the vote was unanimous, 4-0.



**9. ITEMS REMOVED FROM THE CONSENT AGENDA**

No items were removed from the consent agenda.

**10. PUBLIC HEARINGS** *(Anyone wishing to speak on the following public hearings, please sign up with the Town Clerk before the meeting. Please limit comments to 5 minutes.)*

**MPT Perry motion to go into public hearing. Councilman Bateman seconded and the vote was unanimous, 4-0.**

**a.) Text Amendment: Proposal to amend Sections 42-1, 4-5, and 4-6 with standards for riding horses in Kitty Hawk, keeping horses, setbacks for horse shelters and enclosures, and allowances for nonconforming situations to continue in the future.**

Planning Director Heard said the proposal is to amend Sections 42-1, 4-5, and 4-6 with standards for riding horses in Kitty Hawk, keeping horses, and setbacks for horse shelters and enclosures as well as creating allowances for existing situations that may not conform with the existing or proposed standards that the council has developed. The significant changes to the ordinance that are proposed are changes to the required dates for the Coggins tests that the horses have to have annually. The new dates would make it more flexible for horse owners. Secondly, stables and other type of horse shelters would be classified in the same manner. There would be no difference between what type of shelter was being proposed on a property. Third, keeping of horses and use of horses would be limited to property owners and residents of Kitty Hawk who meet certain residency requirements. All horses would be required to be kept within a fenced enclosure. This horse enclosure would have to be at least 100' from occupied buildings and 20' from all property lines. The horse shelter would have to be located at least 100' from occupied buildings and 80' from all existing property lines. Pre-existing nonconforming situations would be allowed to continue in most cases. Then there would be definitions added and a change to the section regarding horseback riding which would clarify under which circumstances horses can be ridden in the town. That is a summary of the work to refine recommendations into an ordinance that will hopefully be more acceptable to the community at large.

Noting no one had signed up to speak, Mayor Perry asked if anyone wished to speak to this portion of the public hearing. When no one came forward, he asked for the record to reflect such. He then asked PD Heard to summarize item 10 (b).

**b.) Zoning Amendment: Proposal to rezone four (4) parcels at 4907, 4911, 4915, and 4919 Putter Lane (located in the 4900 block of N. Croatan Highway) from Beach Residential (BR-1) to Beach Commercial (BC-1).**

PD Heard said this item is a rezoning request. In this case there are 4 properties and they are the properties highlighted in yellow on the map. They are 4 wooded, undeveloped properties located just to the north of Coldwell Banker Seaside Realty, on the west side of Highway 158.

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Council may have noticed the "For Sale" sign for a number of years on the properties. The owner of the properties has submitted a proposal for the town to consider rezoning the properties from Beach Residential (BR-1) which is mainly a single family residential zone to a Beach Commercial (BC-1). That would be an opportunity to allow a greater variety of uses on that property, including many different types of commercial uses, office, retail and a variety of other uses potentially. And it would still permit a residence should that opportunity arise.

In 2005 the same property owner made a similar request to the council at that time. At that time the applicant did not have any pending use for the property and it had not sat vacant for the same length of time as it has now. At that time the council voted to deny the application for those properties.

The lots are 200' in depth and each of the 4 properties have 100' of frontage on Croatan Highway. Each property has 100' of frontage to the rear on Putter Lane. In that block it is one-way on Putter Lane, driving north, and it is only a one lane road in very poor condition. One of the things that was discussed at the planning board meeting and at that meeting the applicant did agree that should the properties be rezoned, they would like to see access from Croatan Highway rather than having any kind of commercial access to Putter Lane. The applicant also shared with the board there are two potential businesses looking at this property should it be rezoned. There would be two different businesses looking at it. The 4 lots would be combined in a manner where those two businesses could locate there. Note also if the property is rezoned the property owner is not limited to those proposed uses. In other words this is not a site plan at this point in time. That would be an additional step that those particular businesses or the owner would have to take. Secondly, should they be rezoned the owner would then be able to do anything that is allowed within that district. It would not be limited to the two uses discussed with the planning board.

At its meeting on January 20<sup>th</sup> the planning board voted 3-2 to recommend approval to the council of this request. The board members had a lot of discussion. The members voting in favor of the application, some of the key points they discussed were that the commercial development and retail uses of the subject properties would benefit the tax base of the town. There was mention made amongst some of the members that they felt the properties were no longer desirable for residential development and pointed out the inability to sell these properties as an example of that. And finally, that the commercial development would be the highest and best use for these subject properties. Those were some of the points made by those in favor.

Conversely, there were some points made by the members who voted against the application. They felt that the proposal was inconsistent with the Town's adopted Land Use Plan. The Land Use map contained within that plan designates these properties for residential use, for low density residential use. Secondly, they noted the change, while it might result in greater allowances for commercial development, would result in a loss of land for residential development which some of the members felt was equally important. And finally, some of those members questioned the assertion that the properties are no longer viable for residential development.

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**Susan Pope:** *Hello and good evening. I am a resident of Putter Lane. My husband and I live at 5001 Putter Lane. What I am passing around are copies of my remarks and also a copy of an email that my neighbor sent me that they sent you. I could not open it and I asked her to send it in the body of the email to me. I was afraid maybe you could not open the program and I wanted to make sure that you had access to their concerns. So that is what the second sheet is about. My other neighbor has also sent some material to Melody at the town and she was supposed to give that to you to read also.*

*I am here to speak against the proposal and I am speaking for my husband. If these lots are zoned commercial our property values will be lowered. It would also make our property harder to sell. I mean who wants to live next door to a 7-11 or a gas station or even an office building? Making these lots commercial just so this gentleman can sell his property and sell it at a higher rate, the commercial rate does so at the expense of the property owners and residents on this street. He bought this property as residential property, apparently with the idea he could have it rezoned commercial. As Mr. Heard stated he tried to have it rezoned in 2005 and we are sorry he has not been able to turn his property around and make a bundle but unfortunately that is today's economy. I had my house on the market for two years and we were not able to sell it either. That has happened to a lot of folks in this area. It is unfortunate that he has made a bad investment but should the rest of the property owners on this street be penalized for his misfortune or his bad judgment?*

*Putter Lane is a one lane private road that is currently maintained by the golf course and the residents on the street, primarily my husband. For 11 years now he has trimmed trees and filled potholes with some assistance from those part time residents that we have for neighbors. If this is zoned commercial are you going to take this street over, are you going to maintain it because there is going to be a lot of trucks and stuff like that delivering stuff to businesses if they are built on these lots. With the income you receive, will the tax income you receive compensate you for maintenance of that road? That would be only fair.*

*Also, as Mr. Heard stated, the plan, the rezoning plan is contrary to the Land Use Plan that you developed and I urge you to follow the guidelines that you established. Thank you.*

Clerk Morris noted for council no one else had signed up. Mayor Perry recognized a gentleman in the audience and asked him to step forward.

**James Olcheski:** *My wife and I own 4921 Croatan Highway right across from where they are talking about doing this development. Currently we do not reside in the house, we just have it as a rental but we do plan on moving there one day. And I just would really rather see it remain noncommercial across the street there. It is residential and it is wooded. There is plenty of commercial space that is vacant right now in Kitty Hawk and all along here. I just do not see any need to develop that and I just think it would be better to stay with a residential zoning on it.*

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Mayor Perry asked if anyone else wished to speak.

**Carlos Gomez:** *Good evening. I am Carlos Gomez with Coastal Engineering and Surveying and I represent Mr. Bobby James. He is the owner of the property. The property has been for sale and he has not been able to do so until now. At this moment he has a contract to buy, pending this rezoning. He has it in hand, but the street in the back is going to be off limits. It is going to stay as beach residential so it is not going to be used for commercial purposes. And really it is a property that has been sitting there for a long time and he would like to do something and it is probably the best thing for the town.*

**Bobby James.** *Mr. Mayor, Councilmen, in response to the lady that just came up here the property has been tried to be sold as residential. It has been tried to be sold as multifamily. It has been on the market for 7 years, since I have had it. I do have a contract for one user and everybody that has looked at it for commercial has not considered using Putter as a commercial road. There has been limited access considered on the highway with two cuts. One so that the trucks can pull in, back into the unloading ramp and then pull out going the other way and they would not have any problems. We have had different businesses submit site plans to the planning board for their review so this is something we are sure if it is approved could happen. There is not speculation on what could be there. We have a good feel for what is going to go there with your approval.*

Mayor Perry thanked Mr. James.

Bobby James replied thank you.

**Helen Wiegel:** *Mr. Mayor and council, I do not live on Putter Lane but I am a resident of the Sea Scape community and I would hate to see that go commercial. I think it should stay with the Land Use Plan. Putter Lane is definitely not for commercial use and I doubt that they could get a permit from the State to enter off the highway in that community, hopefully not. But I am against it.*

Seeing no one else come forward to speak, **Town Clerk Morris** said, *Mr. Mayor I would like to state for the record the Town Council has received a letter from Daniel and Paul Miller, a letter from John Schmidt and Brenda Leiby, and a letter from Bruce Maston in opposition to this rezoning.*

Mayor Perry asked if there was anybody else wishing to speak. Seeing no one, he asked for the record to reflect such and asked for a motion to go back into regular session.

**11. RETURN TO REGULAR SESSION (Council action on above public hearings) -** *Council action for 10 (a) and (b) may include approval, denial, approval with modifications, or tabling action.*

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Councilman Bateman offered a motion to go back into regular session. MPT Perry seconded and Councilwoman Klutz seconded. Vote was 4-0.

(10a). Councilman Bateman moved to amend Section 42-1, 4-5, and 4-6 with the standards proposed in the attached ordinance for keeping and riding horses in Kitty Hawk. Town Council finds this amendment to be consistent with the Town's adopted CAMA Land Use Plan and in the public interest by providing appropriate standards that balance the interest of those horse owners and other property owners in the Town of Kitty Hawk. Councilwoman Klutz seconded. Mayor Perry asked for any discussion and said he hoped this clarifies some things that were questionable in allowing horses to be placed in some locations. There was some confusion in some of the way it was written but there has been a number of years with no problems and is sorry we got into this. But maybe something good will come out of it and is in support of it. **Vote was 4-0.**

(10b). Mayor Perry said council has some letters concerning the rezoning and would like to wait and see if any more letters or information is received before action is taken.

Hearing a council consensus to postpone action, MPT Perry made a motion for council to table this proposed zoning amendment until the April 4<sup>th</sup> council meeting. Councilman Bateman seconded the motion and the vote was unanimous, 4-0.

**12. PLANNING**

a.) Call for Public Hearing. Text Amendment: Proposal to replace the existing Chapter 32, *Soil Erosion & Sediment Control*, with updated standards and wording from the N.C. Division of Land Resources to make our standards compliant with current State standards. The public hearing is requested to be scheduled for the April 4, 2011 Town Council meeting.

MPT Perry made a motion to set a public hearing for the town council meeting on April 4, 2011 regarding the proposed text amendment updating standards for Soil Erosion and Sedimentation Control. Councilman Bateman made a second. The vote was 4-0.

**13. UNFINISHED BUSINESS**

a.) Conditional Use Permit. Application for a conditional use permit to establish an open air farmers' market and a variety of retail uses within the existing building in a Beach Commercial (BC-2) zoning district on the former Foreman's Lumber property at 4100 N. Croatan Highway.

Mayor Perry said this item was postponed from last month's meeting to allow time to consider the input council received during the public hearing.



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Councilwoman Klutz said she thought much of council's concern was mainly regarding how the market with itinerant vendors and requests for conditional uses that are only proposed for the interior of the market would work. The town's policy and process for dealing with conditional uses as it is outlined in the town code are for a conditional use, a single conditional use, to be presented with a site plan and in effect approved by council when the site plan depicts where the conditional use will be in the property. There is a clear understanding on how the various conditions of each of those uses are going to be satisfied.

When council was trying to determine who or which entity was going to have some responsibility for satisfying those uses there was quite a lengthy discussion on whether the applicant was responsible for satisfying the various conditions that are associated with conditional uses or whether the vendor who would actually be running the business would be responsible. If it was the vendor who was responsible, then my understanding of what Mr. Heard presented was that the vendors would come to the town with the conditional use that was proposed to actually commence in the near future and that the conditional use permit would be granted to that vendor. In going through all of the uses that were requested, I have tried to come up with a motion that would establish the market and address the various conditional uses that were presented to the council and which we had comments on in the public hearing.

**Councilwoman Klutz said *"I move to grant approval of the application to establish the Kitty Hawk Market at 4100 North Croatan Highway which shall meet compliance with all building and fire code requirements prior to issuance of a certificate of occupancy subject to all conditions outlined in the staff report dated February 7, 2011 and the following additional conditions: 1) all vendors leasing space in the Kitty Hawk Market shall register at Kitty Hawk Town Hall for a farm market vendor permit. The permit shall be valid for one year upon payment of the fee per the Town of Kitty Hawk fee schedule. The permit shall be available for public inspection while vending at the market. 2) vendors shall achieve compliance with regulations governing any proposed use as promulgated by all governing regulatory authorities. I further move to approve the farm/produce market conditional use subject to all the conditions listed on the Giese Construction Incorporated site plan dated November 8, 2010 revised December 20, 2010. This conditional approval follows the precise wording of paragraph (j) of the site plan requiring the minimum amount of paved parking for retail space. Grass parking is permitted only for excess parking spaces. The applicant shall provide delineation of proposed vending stalls on the site plan as well as details of materials placement and attachment methodology for the outdoor canopy in the vending area. I further move that vendors seeking other conditional uses in the Kitty Hawk Market shall apply for approval on a case by case basis in accordance with Kitty Hawk Town Code Section 42-99, Application for Building Permit for Conditional Uses. Town Council finds that approval of the Kitty Hawk Market and the Farm Produce Market conditional use is consistent with the Town's adopted CAMA Land Use Plan and in the public interest."***

Councilwoman Klutz then asked if the applicant understands and accepts the conditions.



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Following a brief pause she added there would be some other motions involved that would establish a fee for the market vendor permit and the fee of \$10.00 for the yearly vending permit is recommended.

There would be a separate motion to deny the applicant's application for the following conditional uses: 1) for the seafood market on site retail sales and production of bakery goods, craft production and retail sales and outdoor storage associated with furniture stores and retail sales of Christmas trees and wreaths and/or seasonal uses. Those conditional uses would be denied. The reasons are that for seafood sales, craft and baked goods production, those two uses have significant potential for structural modification requiring more detail than is provided in the site plan. These uses should also be approved in a process involving the responsible vendor. For Christmas tree sales those can be approved by the town staff at the time of the set up. For outdoor furniture storage, since there is no furniture store delineated in this site plan, there is no way to compute the amount of outdoor furniture storage that would be allowed on the site and so that one is also denied.

Mayor Perry asked about the concession stand.

Councilwoman Klutz replied the concession stand is a permitted use. PD Heard explained to her it is a permitted use and everything that is in the site plan is consistent with that use and nothing else needs to be done for that.

**MPT Perry seconded the motion** and then asked Attorney Michael if the applicant should be asked the question that Councilwoman Klutz brought up.

Attorney Michael replied he can be asked that question to see if he accepts those conditions that were outlined in the motion.

Mayor Perry asked if the applicant had a copy of the motion. Councilwoman Klutz said she had not given him one and asked Clerk Morris to provide him one.

**Mr. Cahoon**, Cahoon and Kasten Architects, said he represented the applicant and would not take council's time to read through the motion and offered the following summary. Essentially, most of the request was approved with the exception of the seafood market, the furniture store, the outside sales related to that, and the bakery, subject to a second application by an actual vendor who would secure approval for those items.

Councilwoman Klutz added another one is craft production.

Mr. Cahoon said craft production. And within that, the grass parking is denied and paved parking is required up to the number of calculated spaces required with only grass for the excess parking.

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Councilwoman Klutz said that is correct.

Mr. Cahoon said it is his understanding that the applicant does accept those conditions.

Councilwoman Klutz asked about making one motion or separate motions dealing with every one of the conditional uses that has been required.

Attorney Michael said the motion that was made grouped some of them in the approval motion and the second motion was to deny the other conditional uses. The conditions that are attached to the approvals are the ones that Mr. Cahoon was asked about and he says the applicant agrees to those conditions.

Councilwoman Klutz said her intent in the motion was to basically approve the market itself once all of the building codes etcetera are satisfied and to add two conditions to the conditions that were documented in the February 7<sup>th</sup> planning report. Then to approve the farm market/produce with the additional conditions outlined there and to say for the other conditional uses, the vendors will apply for those separately and that can go in one motion.

Attorney Michael asked if there is any discussion on the motion.

Mayor Perry said a new site plan with stormwater and other requirements would be required. Excess parking is authorized for grass but is not sure about gravel. It is not in the code that council can authorize gravel parking. .

Attorney Michael said the way he understood the motion, there is going to have to be 75 paved spaces and the overflow parking could be grass.

Councilwoman Klutz said that is correct and she did not say anything about gravel. It is paved parking for all of the required spaces and grass parking would be permitted for excess parking spaces.

Mayor Perry said one of the things about grass parking is it has worked in the village for years in some places. The thought was in some places it is suitable for grass parking. Water can infiltrate better. Gravel parking with clay and stuff mixed into it does not absorb so it was not authorized.

Attorney Michael said in this case gravel parking is already there. He is not increasing the nonconformity by leaving the gravel parking.

Mayor Perry said he just wanted to question the fact that it says grass. The building needs to be secured from the elements because you can see through it. It also seems that rooms need to be built to satisfy the requirements for some of the conditional uses.

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Attorney Michael agreed that some of those conditional uses specifically require a different type of structure.

Mayor Perry said they have to be secured and have air flow and a number of things. He wanted to clarify some of the things that would have to be done in order to get a conditional use in some of them.

Councilwoman Klutz said that is why it is necessary for the vendors to come in. Just the seafood sales have about 10 pages of regulations that deal with walls, windows, floor and ceiling materials. There is no way a blanket approval can be provided for those kinds of conditional uses without coming in with a site plan. That is some of the rationale behind this.

Mayor Perry said that is the way it is done now. The vendors come in and they are responsible to the town.

Councilwoman Klutz offered to reread the motion.

Attorney Michael said since there is a printed version of it he thought everyone understood it but asked Mr. Cahoon if he wanted it to be restated.

Mr. Cahoon replied he believed they understood it.

MPT Perry asked if "applicant" and "vendor" were being mixed up. That is where the confusion comes in. The things that council is denying are basically seafood markets and things that would be inside the building which do not have a site plan sufficient to show where they are cordoned off and how they are going to be ventilated or whatever. That is his problem. He heard the vendor would come in and apply for that, not the applicant. The applicant in this case is Mr. and Mrs. Giese.

Attorney Michael said he understood the motion to mean the applicant being the vendor. The person who is going to actually operate the use.

Councilwoman Klutz said that is correct. That is what she understood from the discussion council had during the public hearing. It is normally the practice for the person who is actually running the business to come in and apply for the conditional use and provide the site plan.

Attorney Michael said that would mean if Mr. Giese wants to operate one of the conditional uses himself he would come in. If Joe Smith was going to be the guy who is going to operate the seafood market he would come in and apply for it.

And anybody that is going to be a vendor, Mayor Perry said, would get a permit for a year and the town would know who was there and was authorized by the town to be there.

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MPT Perry suggested voting on the motion.

Attorney Michael asked Mr. Cahoon if he was confused and he replied no sir, not confused. Mr. Giese is still inclined to go forward but he was wondering whether Mr. Giese should have legal counsel.

Mayor Perry said he understands how confusing it can be. He has been trying to deal with it for a long time and it is not simple the way it has been presented.

Mayor Perry then called for a vote. The vote was unanimous, **3 in favor and 0 opposed.** (Councilman Bateman was recused from voting on this matter during the February 7, 2011 meeting.)

Attorney Michael suggested dealing with the permitted uses by approving the site plan for those purposes.

Councilwoman Klutz said they were taken care of at the beginning of her motion and asked if that was all right. Attorney Michael replied it was okay. That covered it all.

Councilwoman Klutz said this has been very confusing. There has never been a business like this in the town and there are not provisions in the code to make it straightforward. She asked if she needed to make a motion to deny the other conditional uses that were part of the applicant's proposal.

Attorney Michael replied yes and asked if it would be for the same reasons that were already stated.

Councilwoman Klutz said that is correct and **moved to deny the following conditional uses for the Kitty Hawk Farm Market: seafood markets, on-site retail sales and production of bakery goods, craft production and retail sales, outside storage associated with furniture stores and retail sales of Christmas trees and wreaths and/or other seasonal uses. And the discussion, the reasons for denying these conditional uses are: for seafood sales, craft and baked goods production, these uses have significant potential for structural modification requiring more detail than is provided in the site plan. These uses should also be approved in a process involving the responsible vendor. For Christmas tree sales these can be approved by the town staff at the time of setup. The outdoor furniture storage does not apply unless a furniture store is in the site plan. The council finds that denial of these conditional uses is consistent with the town code and the town's adopted CAMA Land Use Plan and in the public interest. MPT Perry seconded the motion. The vote was unanimous, 3 in favor and 0 opposed. (Councilman Bateman was recused.)**

During discussion of a motion for a vendor fee it was decided to discuss it during the budget process.

**14. NEW BUSINESS**

**a.) Appraisal of Property - this appraisal would be on the property across from the sidewalk on E. Kitty Hawk Road. The appraisal is estimated to cost between \$500.00 and \$700.00.**

Manager Stockton reported in light of the fact that the sidewalk on east Kitty Hawk Road between 158 and NC 12 is basically finished it would be nice if there was an access from the sidewalk over to the beach. This is a request to obtain an appraisal of a piece of property for possible acquisition across from the sidewalk for possible use as access.

MPT Perry said no and if something is needed in the future to come back with it but right now he is not willing to vote on spending that money.

Mayor Perry asked about the tax value and Manager Stockton replied he thought it is around \$4,000.00.

Mayor Perry asked if council is willing to make a motion to go forward with asking the owner to sell the property for tax value.

Councilman Bateman said a problem is the lady will not return our calls. He has called her many times at all hours of the day over the last six months. Letters have been written to her. She is elusive. Someone mentioned they thought the two sisters have died and the daughter and maybe a son-in-law is handling this. I do not want to take anything but that would maybe get someone's attention so they would call us back and at least develop a dialogue. The issue we have here is that we have a multi-use path going to the ocean that stops and there is no way for them to get across. You cannot change that. It is there. There is no way to get across to the beach, they are going to cross that dune and there is no crossover. It is not safe. That is the bottom line.

MPT Perry offered they have been crossing over for years, long before a sidewalk was put there.

Councilman Bateman agreed they have been crossing over and he does the same thing.

MPT Perry said this is the first step to a place he is not going, end of story.

Mayor Perry asked if council wants to forget it.

Councilman Bateman asked if council would ask the attorney to once again write a letter one more time and see if there is any response from her.

Council and Attorney Michael discussed the letters already sent and the fact that one of the letters was signed by one of the owners, Mr. Hall.

Council also discussed whether to make an offer for the property and Mayor Perry said he is not opposed to offering to purchase it at a reasonable price.

Councilman Bateman suggested sending one more letter.

**15. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER**

a.) **Update on E. Kitty Hawk Road Sidewalk Project** - Manager Stockton said as mentioned before the sidewalk on East Kitty Hawk Road is finished. The back fill has been put in, plantings have been put in, and the bulkhead is in place. Crosswalks across the driveways have yet to be finished. It was decided not to put the crosswalks at the intersection.

b.) **Update on Sandy Run Park Project, Phase II** - Manager Stockton mentioned staff has met with Eddie Valdivieso and Brian Rubino of Quible and Associates to discuss procedures for the preliminary engineering, design, bidding, and construction of Sandy Run Park Phase II. It has been determined geotechnical work will be started probably in mid-March as well as an update on any permits required. It is estimated that geotechnical work should be finished around the first of April and then they can begin the design work and hopefully have it completed around June. Then we should be able to advertise the work and take bids in mid-July. If all that goes according to plan awarding a contract in August is scheduled. If that happens then work can possibly start in September.

Councilwoman Klutz said she thought extensions had been received on at least the CAMA permit for the park.

PD Heard explained the two State permits, Division of Water Quality and CAMA, are still valid permits but they need to be updated because a fishing pier and a little tower were added. It is not a whole new permit or anything, just an update. A new permit from the Corps may be required and Quible is checking on it.

c.) **Compliment on issuance of sign permit for Sea Scape Beach and Golf Villas** - Manager Stockton said he received a letter from Susan Seay, Property Manager for Sea Scape Beach and Golf Villas complimenting Joe Heard, Planning Director, on the information provided for a new sign on their property. Ms. Seay said that Joe's professionalism and patience is truly an asset to the Town of Kitty Hawk.

d.) **Compliment on cooperation given to the Insurance Services Office** - Manager Stockton said he received a letter from the Insurance Services Office complimenting Donna Heffernan, Zoning Technician and Dennis Speight, Building Inspector for their cooperation given to Valerie Fettig during the recent survey of the town building codes.



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e.) **Compliment from Kim Bowman concerning our Ocean Rescue** - A letter from Kim Bowman was received, Manager Stockton said, complimenting Ocean Rescue for a fine job they do during the summer. Ms. Bowman was especially complimentary of Cole Yeatts. She appreciates the information provided on the rip tides and the jelly fish every summer.

**16. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY**

Attorney Michael said he did not have anything else for council tonight.

**17. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL**

There were none.

**18. PUBLIC COMMENTS**

1.) **Harry Faircloth.** *I would have spoken during the first public comment but council had a lot of business to do. I am sorry everybody left but maybe the thousands watching on TV will hear this message. (Laughter) First of all, I would like to compliment the council for your very, very good judgment and your decisions. I think you do an excellent job and I do appreciate you and the Town of Kitty Hawk should appreciate you.*

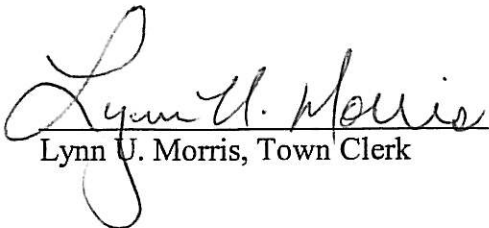
*I also would like to thank the council for permitting my family to plant a tree over at Sandy Run Park in memory of my wife. And if Emilie had not made such a long motion earlier we might have been through earlier, but I do want to thank you all. You do a good job.*

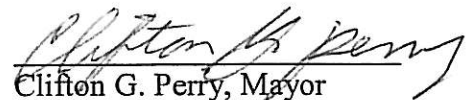
Mayor Perry thanked Mr. Faircloth and asked if there was anyone else wishing to speak. No one came forward and he asked for a motion to adjourn.

**19. ADJOURN**

**MPT Perry, seconded by Councilman Bateman, made a motion to adjourn. Vote was unanimous, 4-0. Time was 8:02 PM.**

These minutes were approved at the April 4, 2011 Council meeting.

  
Lynn U. Morris, Town Clerk

  
Clifton G. Perry, Mayor